

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

V.

RAUL ULISIS BADILLO-GUZMAN,

Defendant.

NO: 1:14-CR-2004-TOR

ORDER TRANSFERRING  
DEFENDANT'S MOTION UNDER 28  
U.S.C. § 2255 TO VACATE, SET  
ASIDE, OR CORRECT SENTENCE

BEFORE THE COURT is Defendant's second Motion Under 28 U.S.C.

§ 2255 to Vacate, Set Aside, or Correct Sentence (ECF No. 107). Defendant

14 | previously filed a motion under 28 U.S.C. § 2255 in August 2017, and a motion to

15 | amend on September 18, 2017. ECF Nos. 88, 89. On October 3, 2019, this Court

16 denied Petitioner's amended motion to vacate. ECF No. 90. The Court has

17 reviewed the present motion, the record, and files herein, and is fully informed.

<sup>18</sup> For the reasons discussed below Defendant's motion (ECF No. 107) will be

<sup>19</sup> transferred to the Ninth Circuit Court of Appeals.

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## DISCUSSION

2 The district court lacks authority to review successive habeas motions filed  
3 without authorization from the court of appeals. 28 U.S.C. § 2255(h); 28 U.S.C.  
4 § 2244(b)(4)(A); see also *United States v. Allen*, 157 F.3d 661, 664 (9th Cir. 1998).  
5 The Antiterrorism and Effective Death Penalty Act of 1996 [AEDPA] amended the  
6 federal habeas statutes and added the requirement that any prisoner seeking to file  
7 a successive habeas application must first file, in the appropriate court of appeals, a  
8 motion for an order authorizing the district court to consider the successive  
9 application. 28 U.S.C. § 2244(b)(3)(A); Ninth Circuit Rule 22-3(a). Once the  
10 applicant files such a motion, the court of appeals then reviews the successive  
11 application to determine whether it contains (1) newly discovered evidence that, if  
12 proven and viewed in light of the evidence as a whole, would be sufficient to  
13 establish by clear and convincing evidence that no reasonable factfinder would  
14 have found the movant guilty of the offense; or (2) a new rule of constitutional  
15 law, made retroactive to cases on collateral review by Supreme Court, that was  
16 previously unavailable. 28 U.S.C. § 2255(h).

17 As previously noted, the Court has already denied Mr. Badillo-Guzman's  
18 first motion under 28 U.S.C. § 2255. ECF No. 90. Neither the record nor any  
19 evidence submitted by Mr. Badillo-Guzman shows that he obtained the required  
20 authorization from the Ninth Circuit. Therefore, this Court does not have

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1 jurisdiction to consider his application for relief. Ninth Circuit Rule 22-3(a)  
2 provides in part,

3 If an unauthorized second or successive . . . section 2255 motion is  
4 submitted to the district court, the district court may, in the interests of  
justice, refer it to the Court of Appeals.

5 The Court believes it is in the interest of justice to transfer this case to the  
6 Ninth Circuit. *See also* 28 U.S.C. § 1631. In general, the Ninth Circuit has taken a  
7 broad view of when transfer is appropriate, recognizing that “[n]ormally transfer  
8 will be in the interest of justice because normally dismissal of an action that could  
9 be brought elsewhere is ‘time-consuming and justice-defeating.’” *Amity*  
10 *Rubberized Pen Co. v. Mkt. Quest Grp. Inc.*, 793 F.3d 991, 996 (9th Cir. 2015)  
11 (citation omitted). Transferring Mr. Badillo-Guzman’s Motion would expedite a  
12 just result in his case.

13 Accordingly, **IT IS HEREBY ORDERED:**

- 14 1. Mr. Badillo-Guzman’s Successive Motion to Vacate, Set Aside or  
15 Correct Sentence Pursuant to 28 U.S.C. § 2255, filed February 20, 2019,  
16 ECF No. 107, shall be terminated in this Court and **TRANSFERRED** to  
17 the Ninth Circuit Court of Appeals for determination of whether his  
18 Motion should be authorized pursuant to 28 U.S.C. § 2255(h).
- 19 2. Mr. Badillo-Guzman is advised that this transfer will not itself constitute  
20 compliance with 28 U.S.C. § 2255 and Circuit Rule 22-3(a). Mr.

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Badillo-Guzman must still file an application for leave to proceed with the Ninth Circuit and make the showing required by § 2255. The Clerk of the Court shall send Mr. Badillo-Guzman a copy of the Ninth Circuit

## Form 12.

3. The corresponding civil file, 1:19-CV-3034-TOR, shall be **CLOSED**.

The District Court Executive is directed to enter this Order and provide

copies to the parties.

**DATED** February 27, 2019.



*Thomas O. Rice*  
THOMAS O. RICE  
Chief United States District Judge

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